

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF WATER RIGHTS
APRIL 23, 2013**

ITEM 6

SUBJECT

A PUBLIC HEARING FOR THE RECEIPT OF ORAL COMMENTS ON THE ADEQUACY OF THE SUBSTANTIVE REVISIONS TO THE 2008 SUBSTITUTE ENVIRONMENTAL DOCUMENT PREPARED FOR THE NORTH COAST INSTREAM FLOW POLICY

DISCUSSION

The State Water Board adopted the Policy for Maintaining Instream Flows in Northern California Coastal Streams (Policy) in 2010 in order to comply with Water Code section 1259.4. In order to comply with the California Environmental Quality Act (CEQA), the State Water Board prepared a substitute environmental document (SED) in connection with its consideration and adoption of the Policy in 2010. The SED evaluated the potential environmental impacts of activities that diverters might take to comply with or avoid the Policy, including the potential environmental impacts that could occur if surface water diverters were to switch to groundwater pumping in order to avoid the limitations imposed by the Policy on surface water diversions. In *Living Rivers Council v. State Water Resources Control Board* (Sup. Ct. Alameda County, 2012, No. RG10-543923), a case challenging the 2010 Policy pursuant to CEQA, the superior court held that the analysis of mitigation measures contained in the SED was inadequate. As a result of the litigation, the State Water Board vacated the Policy in October 2012 and will consider re-adoption of the Policy at a future date.

The State Water Board has revised sections 6.2, 6.9, and 7 of the 2008 SED, prepared a new Supplement to Appendix D of the 2008 SED, and revised portions of the 2010 Response to Public Comments, Volumes 1 and 2. The purpose of these revisions is to: 1) satisfy the court's requirements, 2) clarify the impact analysis to reflect the fact that the potential switch from surface water diversions to groundwater pumping due to the Policy is unlikely to cause a significant reduction in surface water flows and 3) update section 7 to incorporate responses to comments developed for the 2008 SED.

POLICY ISSUE

Water Code section 1259.4 requires the State Water Board to adopt principles and guidelines for maintaining instream flows in coastal streams as part of state policy for water quality control. In order to consider re-adoption of the 2010 Policy, a revised SED has been prepared and circulated for public review. In order to comply with the State Water Board's exclusive procedural requirements for implementation of CEQA for certified regulatory programs, a public hearing will be conducted for the receipt of oral comments on the adequacy of the substantive revisions to the 2008 SED prepared for the Policy.

FISCAL IMPACT

This item involves the receipt of oral comments. The Board will not consider approval of the CEQA documentation or adoption of the Policy as part of this item, as such there is no anticipated fiscal impact.

REGIONAL BOARD IMPACT

This item involves the receipt of oral comments. The Board will not consider approval of the CEQA documentation or adoption of the Policy as part of this item, as such there is no anticipated regional board impact.

STAFF RECOMMENDATION

A public hearing for the receipt of oral comments is a procedural requirement for implementation of CEQA with respect to certified regulatory programs (CCR § 3779(c)). No action or decision is required by the State Water Board at this time, as such there is no staff recommendation. Staff anticipates bringing the SED and Policy to the State Water Board for consideration in late summer or fall of 2013.

Future State Water Board action on this item will assist the Water Boards in reaching Goals 3 and 5 of the Strategic Plan Update: 2008-2012 to promote sustainable local water supplies and to advance organizational performance. In particular, approval of this item will assist in fulfilling Objective 3.3: To ensure that adequate stream flows are available for the protection of fish and wildlife habitat while meeting the need for diversions of water for other uses; and Objective 5.1: To improve the current Water Board systems, programs, functions, and core business processes to enhance effective and consistent implementation of Water Board plans and policies, and State and federal laws and regulations, and to reduce processing time and costs.